

SECRET

24 NOV 1976

MEMORANDUM FOR: Executive Officer, DDA

FROM : Thomas B. Yale
Director of Finance

SUBJECT : Waiver Claims

1. Per your request, attached as Tab A is a copy of the original recommendations on procedures to be followed on handling and reporting of waiver payments. Also attached as Tab B is a copy of the reply from the DDS approving in principle the recommendations for procedures subject to its formal coordination in the regulatory procedures and approval by the Director to reflect that his special authority had been exercised in retaining within the Agency approving amounts over

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2. Agency regulations provide for administration of the waiver law as prescribed by GAO except that under exercise of the special authority of the Director (a) annual reports of activity have been submitted to DCI rather than GAO and (b) claims over \$500 are submitted to DDA up to \$5,000 and to DDCI if over \$5,000.

3. Attached as Tab C is (a) the regulation which formally established the Agency procedures and (b) documents relating to the original regulatory issuance including General Counsel concurrence and DDCI sign off.

4. As a matter of interest there is also attached as Tab D a copy of Mr. Blake's letter to GAO in answer to a GAO letter dated 22 April 1975 concerning reports of waivers. That letter refers to a conversation between [redacted] OGC, and a GAO representative in which it was recognized the Agency would not report on waivers involving pay and allowances paid from confidential funds. There has been no further inquiry from GAO on this subject.

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Thomas B. Yale

Attachments
As Stated

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69-11821
14 MAR 1969

MEMORANDUM FOR: Deputy Director for Support

SUBJECT : Waiver of Claims by the Agency for Erroneous Payment of Pay

REFERENCE : (a) Public Law 90-616 approved October 21, 1968
(b) Code of Federal Regulations, Title 4, Chapter III, Standards for Waiver of Claims for Erroneous Payment of Pay, issued by the General Accounting Office December 26, 1968

1. This memorandum includes a recommendation in paragraph 7 for which your approval is requested.
2. As you know, the reference (a) law provides authority for waiver of claims for the erroneous payment of pay in circumstances where the collection would be against equity and good conscience and not in the best interests of the United States. Reference (b) provides guidelines for administration of the new law.
3. It is clear from a review of reference (b) that the determination of circumstances in which waiver will be appropriate will depend upon the facts existing in each particular case. For example as a principal premise, it is stated that:

"Any significant unexplained increase in an employee's pay which would require a reasonable man to make inquiry to confirm the correctness of his pay ordinarily would preclude a waiver when the employee fails to bring the matter to the attention of appropriate officials."

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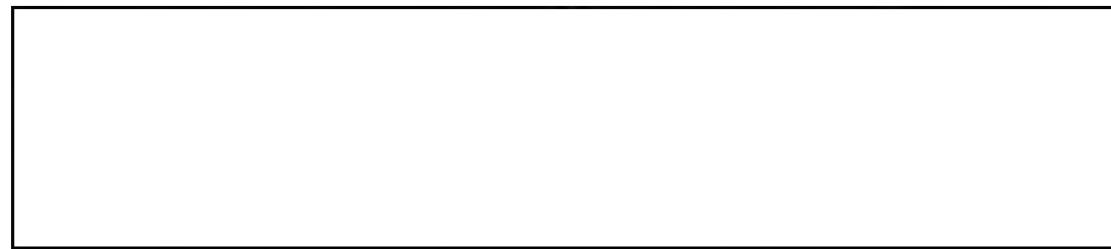
GROUP 1
Excluded from automatic
downgrading and
declassification

SUBJECT: Waiver of Claims by the Agency for Erroneous Payment of Pay

4. The new law is for application to erroneous payments made on or after 1 July 1960; the regulations do not require an Agency to initiate actions to consider claims for waiver but do permit an Agency to initiate the action. Under the implementing regulations, claims for which repayment has been made also may be considered for waiver, and, if waived, the employee may request refund for the repayment.

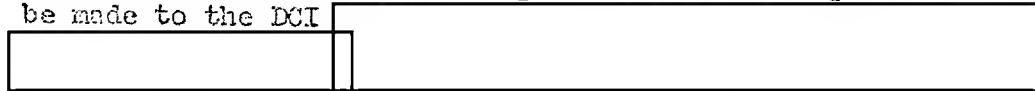
5. Until we acquire some practical experience as to actual types of situations in which waiver will be made, we suggest that no attempt be made to formulate criteria for waiver any more specific than that provided by reference (b). As a consequence of this suggestion it would follow that the initial cases to be considered for waiver will be based upon employee requests or requests from the Operating Officials in the component of assignment; we suggest that the Director of Finance also be allowed to exercise initiative in considering waiver action on currently discovered overpayments if the circumstances should appear to obviously warrant such consideration. For the present at least we urge that the Agency make no effort to research and identify previous claims already repaid which might be eligible for waiver; we suggest that consideration of any such cases be based solely upon the request of the employee.

6. Attached for your consideration as Tabs A, B, C and D are proposed amendments to Agency regulations setting forth basic policy and general responsibilities for Agency implementation of reference (b) regulations. The proposed amendments are consistent with prescribed standards and procedures with the following substantive differences:



FOIAB5

b. Reference (b) requires an annual report to the Comptroller General of the United States of the total amount waived during the fiscal year and the total amount refunded, whereas the attached proposal provides for the report to be made to the DCI



FOIAB5

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SUBJECT: Waiver of Claims by the Agency for Erroneous
Payment of Pay

7. It is recommended that you approve in principle the attached
proposed amendments for submission to the Support Services Staff for
publication subject to the normal Agency coordination process.

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L. E. BUSH
Director of Finance

Attachments
Tabs A, B, C and D

The recommendation in paragraph 7 is approved:

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Distribution:

Original and 2 - Addressee
2 - D/Finance Subj., Chrono
1 - OF Registry
13 - PPS Files

OF/PPS/ [redacted] :sgn(3/12/69) [redacted]

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Tab A

PROPOSED NEW

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15. WAIVER OF CLAIMS FOR ERRONEOUS PAYMENT OF PAY. Agency claims for erroneous payments of pay to employees including such claims as may have been repaid by employees may be waived in whole or in part, subject to the conditions and criteria set forth in chapter XV of

25X1A by:

- (1) The Director of Finance when the claim is in an amount aggregating not more than \$500;
- (2) The Deputy Director for Support when the claim is in an amount aggregating more than \$500 but not in excess of \$5,000; or
- (3) The Deputy Director of Central Intelligence when the claim is in an amount aggregating more than \$5,000.

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Tab B

PROPOSED NEW [REDACTED] CHAPTER XV

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CHAPTER XV: WAIVER OF CLAIMS
FOR ERRONEOUS PAYMENT OF PAY

140. This chapter sets forth the conditions and criteria together with responsibilities and procedures for waiver of claims for erroneous payments of pay.

a. Definitions:

- (1) "Pay" means salary, wages, pay, compensation, emoluments, and other remuneration for services which is subject to Federal income taxes. It includes overtime pay; night, Sunday standby, irregular and hazardous duty differential; pay for Sunday and holiday work; payment for accumulated and accrued leave; and severance pay. It does not include expenses of travel and transportation or expenses of transportation of household goods.
- (2) "Employee" means an employee within any of the categories of personnel as defined in [REDACTED] except detailed military personnel and independent contractors.

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b. Conditions:

Such claims may be waived in whole or in part when all of the following conditions are met:

- (1) The claim arises out of an erroneous payment of pay to an employee on or after 1 July 1960.
- (2) Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. Ordinarily lack of good faith will be implied and will result in a denial of waiver in an instance of any significant unexplained increase in an employee's pay which would

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require a reasonable man to make inquiry concerning the correctness of his pay and the employee did not make such an inquiry through normal administrative channels.

- (3) Waiver action is taken prior to 21 October 1971 on erroneous payments discovered between 1 July 1960 and 21 October 1968, and within three years following discovery for erroneous payments discovered after 21 October 1968.
- c. Requests for waiver of claims for erroneous payments of pay may be initiated by the employee. The Operating Official of the employee's component of assignment or the Director of Finance also may initiate action to consider waiver of an erroneous payment of pay, if such erroneous payment has not been previously repaid in whole or in part by the employee. Requests for refunds of previous repayments of erroneous payments of pay eligible for consideration for waiver may be initiated only by the employee.
- d. The Director of Finance shall:
 - (1) Act as the focal point for receiving all requests for waiver, and where appropriate, initiate action for consideration of waiver.
 - (2) Investigate every claim considered for waiver and prepare a report which shall include:
 - (a) A statement of the aggregate amount of the erroneous payment of pay supported by a citation to the voucher or vouchers upon which the erroneous payment of pay was made together with a showing as to the part of the erroneous payment of pay made on each voucher;
 - (b) A statement showing the reason for and circumstances under which the erroneous payment of pay was made, the date it was discovered, and corrective action required to prevent similar erroneous payments of pay.
 - (c) A statement as to whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim;
 - (d) Such other information as may assist Agency officials to determine whether collection action under the claim would be against equity and good conscience and not in the best interests of the United States; and

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- (e) Recommendations with reasons for or against waiver.
- (3) Act upon recommendations for or against waiver for claims of \$500 or less and indicate reasons in writing if at variance from those reflected in the report of investigation.
- (4) Refer reports on claims for more than \$500 with recommendations for action to DDS or through DDS to DCI as appropriate.
- (5) Examine all applications for refund of repayments made on claims which the employee believes eligible for waiver and, if waiver approved, certify and process for payment or credit to employees' accounts.
- (6) Inform employee through administrative channels of the disposition of the claim.
- (7) Establish and maintain a register of each claim for erroneous payment of pay, including requests for refund, considered for waiver and the disposition thereof.
- (8) Within 60 days after the close of each fiscal year, report to the DCI through the DDS the total amount waived during the preceding fiscal year and the total amount refunded.

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DD/S 69-1317

3 APR 1969

MEMORANDUM FOR: Director of Finance

SUBJECT : Waiver of Claims by the Agency for Erroneous
Payment of Pay

REFERENCE : Memo dtd 14 Mar 69 to DD/S frm D/Fin, same subj

FOIAB5

1. I approve in principle the referent proposed amendments for submission to the Support Services Staff for publication subject to the normal Agency coordination process.

FOIAB5

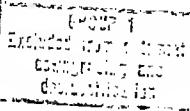
2. [redacted]
[redacted] Upon completion of the normal Agency coordination process, the amendments will have to be submitted to the Director for his approval.

3. To the above I would add one further action to be taken by your Staff. I wish to insure that all employees are aware of the new legislation and the effect it could have on those who might be entitled to request reconsideration of any previous reimbursement for an overpayment. To that end, I would ask that at the time the revised regulations are ready for publication an all employee notice also be published setting forth the substance of the new legislation and the appropriate criteria against which employees might seek reconsideration of previous reimbursement of overpayments.

Signed R. L. Bannerman

R. L. Bannerman
Deputy Director
for Support

Att: Reference



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FINANCIAL ADMINISTRATION

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15. **WAIVER OF CLAIMS FOR ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES.** This paragraph states the conditions, criteria, responsibilities, and procedures for waiver of claims for erroneous payments of pay and allowances.

a. **POLICY.** Agency claims for erroneous payments of pay and allowances to employees, including such claims as may have been repaid by employees, may be waived in whole or in part, provided

- (1) the claims are for erroneous payments of pay or allowances to an employee on or after 1 July 1960;
- (2) collection action under the claims would be against equity and good conscience and not in the best interests of the United States. Generally these criteria will be met if the erroneous payments occurred through administrative error and if there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. Ordinarily lack of good faith is implied when there has been an unexplained, significant increase in an employee's pay or allowances which would reasonably cause him to make inquiry concerning their correctness and when he has not made such an inquiry through normal administrative channels;
- (3) waiver action is taken prior to 21 October 1971 on erroneous payments of pay discovered between 1 July 1960 and 21 October 1968, and within three years following discovery for erroneous payments discovered after 21 October 1968;
- (4) waiver action is taken prior to 2 October 1975 on erroneous payments of allowances discovered between 1 July 1960 and 2 October 1972 and within three years following discovery for erroneous payments discovered after 2 October 1972.

b. **DEFINITIONS**

- (1) "Pay" means salary, wages, pay, compensation, emoluments, and other remuneration for services which is subject to Federal income taxes. It includes overtime pay; premium pay; flight pay; night, Sunday standby, irregular and hazardous duty differential; post differential; pay for Sunday and holiday work; payment for accumulated and accrued leave; and severance pay.
- (2) "Allowances" means living quarters allowance, post allowance, supplementary post allowance, foreign transfer allowance, home service transfer allowance, separate maintenance allowance, education allowance, cost-of-living allowance, post differential, and clothing allowance. They do not include travel and transportation allowances.
- (3) "Employee" means an individual within any of the categories of personnel as defined in [redacted] except detailed military personnel, independent contractors and agents.

c. **AUTHORITIES**

- (1) The Director of Finance may waive a claim in an amount aggregating not more than \$500.
- (2) The Deputy Director for Management and Services may waive a claim in an amount aggregating more than \$500 but not in excess of \$5,000.
- (3) A claim in an amount aggregating more than \$5,000 must be referred to the Deputy Director of Central Intelligence.

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→Revised: 27 July 1973 (754)

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FINANCIAL ADMINISTRATION

1. d. REQUESTS for waiver of claims for erroneous payments of pay or allowances may be initiated by the employee. The Operating Official of the employee's component of assignment or the Director of Finance also may initiate action to consider waiver of erroneous payments of pay and allowances, if such erroneous payments have not been repaid in whole or in part by the employee. Only the employee concerned may request a waiver if the erroneous payments have already been repaid. Each request originated by an employee must include a statement by him explaining why the overpayment did not cause him to make some inquiry through normal administrative channels.

2. e. RESPONSIBILITIES. The Director of Finance

- (1) Receives all requests for waiver or, when appropriate, initiates action for consideration of waiver.
- (2) Investigates every claim considered for waiver and prepares a report which includes:
 - (a) The aggregate amount of the erroneous payments of pay and allowances supported by a citation to the relevant voucher or vouchers and a statement of the amount of erroneous payment made on each voucher;
 - (b) The reason for and circumstances under which each erroneous payment was made, the date it was discovered, and corrective action required to prevent similar erroneous payments;
 - (c) A statement whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim;
 - (d) Such other information as may assist Agency officials to determine whether the criteria for waiver have been met; and
 - (e) Recommendations with reasons for or against waiver.
- (3) Acts upon recommendations for or against waiver for claims of \$500 or less and refers reports on claims for more than \$500 with recommendations for action to the Deputy Director for Management and Services, or through him to the Deputy Director of Central Intelligence, as appropriate.
- (4) Informs the employee through administrative channels of the disposition of the claim. If a refund is due, certifies and processes it for payment or credit to the employee's account.
- (5) Establishes and maintains a register of each claim and its disposition.
- (6) Within 60 days after the close of each fiscal year, reports to the Director through the Deputy Director for Management and Services, the total amount waived during the fiscal year and the total amount refunded.

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WASHINGTON, D.C. 20548

TRANSPORTATION AND
CLAIMS DIVISION

ARA

APR 22 1975

William E. Colby, Director
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Colby:

One of our responsibilities is to monitor agency activity under the law which authorizes the waiver of erroneous payments of pay and allowances to civilian employees of executive agencies (5 U.S.C. 5584). Agencies are required by 4 CFR 92.7(b) to report annually on their waiver activity, and each year our Office sends a letter to the heads of executive agencies outlining the reporting requirements. Apparently, your agency has been omitted from the list of addressees.

We are enclosing a copy of our June 12, 1974, letter and would appreciate receiving a report on your waiver activity, if any, for fiscal years 1972, 1973, and 1974. We would also appreciate your comments on the questions regarding the waiver authority.

Inquiries relating to this matter may be directed to Mr. Chris Farley of my staff, Code 129, Extension 5256, Area Code 202-386-5256.

Sincerely yours,

John A. Bambrick
Chief, Agency Reviews and
Assistance - Claims

Enclosure

OF5-628



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

TRANSPORTATION AND
CLAIMS DIVISION

ARA

June 12, 1974

To the Heads of Executive Agencies and Military Departments

Subject: Annual Report of Waiver of Claims for Erroneous Payments of Pay and Allowances, 5 U.S.C. 5584
10 U.S.C. 2774, 32 U.S.C. 716 (4 CFR 91-93)

Section 92.7(b) of title 4 of the Code of Federal Regulations provides for the head of each executive agency or the Secretary concerned to report annually to the Comptroller General of the United States on waiver activities. On October 2, 1972, Public Law 92-453 authorized the waiver of claims of the Government arising from erroneous payments of pay and allowances (other than travel and transportation allowances) made to members or former members of the uniformed services including the National Guard.

This law also broadened existing waiver authority (Public Law 90-616) to include allowances for civilian employees (other than travel and transportation expenses and allowances and relocation expenses payable under 5 U.S.C. 5724a) and changed the time waiver requests would be barred.

Our July 6, 1972 letter, which revised the annual report format, contained eight items. For fiscal year 1974 items seven and eight will not be required because of the change in the law. Items one through six are repeated below and this information should be submitted within 60 days after June 30, 1974. If you exercised both civilian and military waiver authority, separate reports should be furnished for civilian employees and members or former members of the uniformed services.

1. Number of waiver requests granted in full by your agency and the dollar amount thereof.
2. Number of waiver requests denied in entirety by your agency and the amount thereof.
3. Number of claims which have been waived in part by your agency including the aggregate amount waived and the aggregate amount denied in this category.
4. Number of requests transmitted to GAO for waiver consideration.

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5. Amount refunded as a result of your waiver action.

6. Amount refunded as a result of GAO's waiver action.

We reported to the Congress on September 15, 1972 (B-152040, B-158422), on the "Operation of the Law Permitting Waiver of Erroneous Payments of Pay." In order to incorporate agency viewpoints in our next report, we would appreciate your comments on the following:

1. Has the "corrective action" provision (4 CFR 92.3(a) been effective in preventing similar erroneous payments?
2. What is your average cost of conducting an investigation, as required by 4 CFR 92.2, and processing the waiver request to completion?
3. Do you have any suggestions for amending the waiver authority to make it more effective or equitable?
4. What comments do you have concerning waiver authority?

If your current regulations have not been revised in accordance with Public Law 92-453, this should be accomplished as soon as possible. If you have not furnished us with a copy of your regulations which includes the authority granted by Public Law 92-453, such regulations should accompany your annual report.

Please address your report to the Deputy Director, Transportation and Claims Division, U.S. General Accounting Office, Washington, D. C. 20548.

Inquiries relating to this matter may be directed to Mrs. Edith S. Mayfield, Chief, Agency Reviews and Assistance - Claims, Transportation and Claims Division, Code 129, Extension 5256, Area Code 202-386-5256.


J.P. Barton
Deputy Director

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